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The Impact of Social Security Reform on Women's Economic Security

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INTRODUCTION

For most Americans, social security represents an essential source of economic security in retirement and old age. The existing system, however, faces severe long-term financial problems, and there is substantial disagreement over the appropriate direction and scope of reform. Several current proposals recommend some form of privatization, which could have important consequences for women. Proponents argue that women would fare better under a privatized system; critics warn that women would lose much of the protection provided by the existing system. This article examines the potential impact of reform proposals on women in their roles as workers, wives, and widows. Part One considers issues of social adequacy and individual equity, focusing on spousal and survivor benefits under the existing system. Part Two analyzes the implications for women of specific privatization proposals, and Part Three explores alternative options for providing better protection for women against the risk of poverty in old age. In conclusion, the article suggests that incremental reform of the existing system may be the best way to reconcile competing goals of adequacy and equity.

I. THE EXISTING SYSTEM AND ITS IMPACT ON WOMEN

A. Women as Workers, Wives, and Widows

Under the existing system, benefits for retired workers and their families are financed primarily from payroll taxes imposed at a

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flat rate on the wages of current workers.¹ The basic benefit payable to a retired worker is determined by applying a progressive benefit formula to the worker's covered earnings.² In addition, a current or former spouse of a retired worker may be eligible for a 50 percent spousal benefit, and a surviving spouse may be eligible for a 100 percent survivor benefit.³ The existing system is often criticized for favoring one-earner couples over two-earner couples. Due to the progressive benefit formula, a one-earner couple may receive higher total benefits than a two-earner couple with identical total wages.⁴ Consider two hypothetical couples, the One-Earners and the Two-Earners, who are similarly situated except that in the former couple all wages are earned by the husband and in the latter couple the wages are earned equally by the husband and the wife. The two couples' respective monthly earnings and benefits are summarized as follows:⁵

¹ The payroll tax is imposed at a flat rate of 12.4 percent. Half the tax is collected from the employer, and half is withheld from the worker's wages. For 1999, the maximum amount of wages subject to the payroll tax is \$72,600. See 26 U.S.C. §§ 3101(a), 3111(a) (1994); 42 U.S.C. § 430 (1994).

² For workers retiring in 1997, the basic old age benefit, known as the "primary insurance amount" (PIA), is equal to 90 percent of the first \$455 of "average indexed monthly earnings" (AIME), plus 32 percent of the next \$2,286 of AIME, plus 15 percent of the balance of covered AIME. The monthly benefit is equal to the PIA, rounded down to the nearest whole dollar. See 42 U.S.C. §§ 402(a), 415(a), (b), (e), (g) (1994); STAFF OF HOUSE COMM. ON WAYS AND MEANS, 105TH CONG., 2d SESS., 1998 GREEN BOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 25 (Comm. Print 1998). The old age benefit attributable to a retired worker's own earnings record is referred to here as a "worker benefit," to avoid confusion with spousal and survivor benefits.

³ See 42 U.S.C. § 402(b), (c), (e), (f) (1994).

⁴ See RICHARD V. BURKHAUSER & TIMOTHY M. SMEEDING, SOCIAL SECURITY REFORM: A BUDGET NEUTRAL APPROACH TO REDUCING OLDER WOMEN'S DISPROPORTIONATE RISK OF POVERTY 10-11 (Policy Brief No. 2/1994) (Syracuse Univ., Maxwell School of Citizenship and Public Affairs, Center for Policy Research, 1994).

⁵ For simplicity, the illustration assumes that the workers in both couples retire in 1997, when the workers (and their spouses) are age 65.

	One-Earners		Two-Earners	
	Earnings	Benefits	Earnings	Benefits
Husband	\$2,000	\$903.90	\$1,000	\$ 583.90
Wife	0	451.95	1,000	583.90
Total	\$2,000	\$1,355.85	\$2,000	\$1,167.80

Furthermore, under the "dual-entitlement rule," a secondary earner's total benefit cannot exceed the greater of her own worker benefit or her spousal (or survivor) benefit.⁶ Viewing the secondary earner's benefit as a financial return on her payroll contributions, critics argue that the secondary earner's contributions are wasted to the extent that they fail to generate an increase in her total benefit.⁷

The disparity between one-earner and two-earner couples may become even more pronounced after the death of one spouse, when the survivor becomes entitled to a survivor benefit equal to the deceased spouse's worker benefit (to the extent it exceeds the survivor's own worker benefit, if any).⁸ In the above example, assuming the husband dies first, Mrs. One-Earner becomes entitled to a survivor benefit of \$903.90 (67 percent of the couple's original combined benefits). By contrast, Mrs. Two-Earner continues to receive her own worker benefit of \$583.90 (50 percent of the couple's original combined benefits); since her worker benefit was equal to that of her deceased husband, she receives no additional survivor benefit. Thus, the \$188.05 difference between the two couples' total benefits while both spouses are living widens to \$320 after the death of the husband. For couples between the extremes represented by the One-Earners and the Two-Earners, the disparities in benefits are less

⁶ Technically, the secondary earner's spousal benefit is reduced (but not below zero) by the amount of her own worker benefit. See 42 U.S.C. § 402(k)(3) (1994).

⁷ See Edward J. McCaffery, *Taxation and the Family: A Fresh Look at Behavioral Gender Biases in the Code*, 40 UCLA L. REV. 983, 998-99 (1993).

⁸ See BURKHAUSER & SMEEDING, *supra* note 4, at 10-11.

pronounced.⁹

The disparate treatment of one-earner and two-earner couples is often seen as evidence of a systematic bias in favor of "traditional" families with husbands as breadwinners and wives as homemakers.¹⁰ Historically, however, the system of spousal and survivor benefits was justified in terms of social welfare, reflecting the presumed dependency of married women.¹¹ These "derivative" benefits, enacted in 1939, loosened the original linkage between payroll contributions and benefits and introduced an "income-transfer" component similar to other social welfare programs.¹² Furthermore, despite the absence of means testing, the dual-entitlement rule operates in much the same way as a "benefit offset" provision in other welfare programs.¹³

In the aggregate, social security has a markedly redistributive impact in favor of women.¹⁴ Since women tend to earn lower wages and live longer than men, they receive disproportionately favorable treatment under the progressive benefit formula and the system of spousal and survivor benefits. The redistributive features of the benefit structure are grounded in considerations of social adequacy.

⁹ See 1 1994-1996 ADVISORY COUNCIL ON SOC. SECURITY REP. 143 (1997) [hereinafter ADVISORY COUNCIL REP.] (statement of Edith U. Fierst) (noting inverse relationship between level of secondary earner's wages and level of survivor benefits).

¹⁰ See McCaffery, *supra* note 7, at 998-1000.

¹¹ See Karen C. Burke & Grayson M.P. McCouch, *Women, Fairness, and Social Security*, 82 IOWA L. REV. 1209, 1214-15 (1997).

¹² See Karen C. Holden, *Women as Widows Under a Reformed Social Security System*, in PROSPECTS FOR SOCIAL SECURITY REFORM 356, 357 (Olivia S. Mitchell et al. eds., 1999).

¹³ See *id.* (noting the offset for income earned by a retired worker above a specified level). The dual-entitlement rule could be recast as leaving the spousal benefit intact while imposing a 100 percent tax on the secondary earner's own worker benefit, up to the amount of the spousal or survivor benefit. See Burke & McCouch, *supra* note 11, at 1214 n. 25.

¹⁴ As a group, women are "net gainers" from the system in the sense that they receive a disproportionately high level of benefits compared to their contributions. See Laura E. Stiglin, *A Classic Case of Overreaction: Women and Social Security*, NEW ENG. ECON. REV. 29, 31 (Jan.-Feb. 1981). Women make around 28 percent of all social security contributions, and receive around 54 percent of total benefits. See Alicia H. Munnell & Laura E. Stiglin, *Women and a Two-Tier Social Security System*, in A CHALLENGE TO SOCIAL SECURITY: THE CHANGING ROLES OF WOMEN AND MEN IN AMERICAN SOCIETY 101, 106 (Richard V. Burkhauser & Karen C. Holden eds., 1982).

At present, 13.1 percent of elderly women live in poverty; without social security, according to one recent study, the poverty rate for this group would be 52.2 percent.¹⁵

Nevertheless, even with the benefits provided under the existing system, the poverty rate for elderly women remains almost twice as high as for elderly men.¹⁶ Even more striking is the gap between married couples and unmarried individuals. While married couples are likely to enjoy relative well-being in retirement, widows and other unmarried women face a significant economic risk of poverty.¹⁷ Indeed, the poverty rate for elderly unmarried women may be almost four times as high as for elderly married couples.¹⁸ Social security may fairly be described as "overprotect[ing] married couples and underprotect[ing] survivors, most of whom are women."¹⁹ Thus, the substantial improvement in the economic well-being of the elderly as a group in recent decades should not obscure the substantial and persistent disparities in income distribution within the group.

Women's participation in the work force has risen dramatically in the last few decades. By one recent estimate, 59 percent of women age 16 or older now participate in the work force,

¹⁵ See NAT'L ECON. COUNCIL, INTERAGENCY WORKING GROUP ON SOC. SECURITY, WOMEN AND RETIREMENT SECURITY 7 (1998) (hereinafter NAT'L ECON. COUNCIL) (noting that the poverty rate for elderly women was 13.1 percent in 1997 (18.0 percent for elderly widows); without social security benefits, the poverty rate for elderly women would have been 52.2 percent (60.6 percent for elderly widows)).

¹⁶ See *id.* at 5 (noting 1997 poverty rate of 13.1 percent for elderly women, 7.0 percent for elderly men); Peter A. Diamond, *The Economics of Social Security Reform*, in FRAMING THE SOCIAL SECURITY DEBATE: VALUES, POLITICS, AND ECONOMICS 38, 46 (R. Douglas Arnold et al. eds., 1998) (noting 1992 poverty rate of 15.7 percent for elderly women, 8.9 percent for elderly men).

¹⁷ See BURKHAUSER & SMEEDING, *supra* note 4, at 7-9.

¹⁸ See NAT'L ECON. COUNCIL, *supra* note 15, at 12 (noting 1997 poverty rate of 22.2 percent for elderly divorced women, 20.0 percent for elderly never-married women, and 18.0 percent for elderly widows, compared to 4.6 percent for elderly married couples); see also Steven H. Sandell & Howard M. Iams, *Reducing Women's Poverty by Shifting Social Security Benefits from Retired Couples to Widows*, 16 J. POL'Y ANALYSIS & MGMT. 279, 281 (1997) (noting that "[p]overty is three to four times more likely among unmarried women than married women").

¹⁹ See BURKHAUSER & SMEEDING, *supra* note 4, at 12 (noting that "income security policy has consistently offered the greatest level of protection to traditional married men").

compared with 75 percent of men.²⁰ This trend is matched by an increase in the number of women receiving benefits based in whole or in part on their own earnings records. According to one recent study, over 36 percent of women age 62 or older receive worker-only benefits, and over 25 percent are "dually entitled."²¹ By the same token, the importance of spousal benefits within the existing system appears to be declining.²² Nevertheless, despite these trends, important differences are likely to persist in the work patterns and social security benefits of women compared to those of men.²³ Women may continue to increase their participation in the work force, but they will remain more likely than men to work intermittently or part-time. The wage differential between men and women may continue to diminish, but, on average, women will continue to earn significantly less than men.²⁴ Moreover, the expected increase in divorce or separation threatens to exacerbate the problem of poverty among elderly unmarried women.²⁵

²⁰ See U.S. GEN. ACCT. OFF., *SOCIAL SECURITY REFORM: IMPLICATIONS FOR WOMEN'S RETIREMENT INCOME* 5 (1997) (citing 1996 rates of participation, up from 38 percent for women and 83 percent for men 35 years earlier). *But cf. id.* at 6 (noting that the rate of increase in labor force participation for younger women has slowed).

²¹ See U.S. GEN. ACCT. OFF., *SOCIAL SECURITY: ISSUES INVOLVING BENEFIT EQUITY FOR WORKING WOMEN* 37 (1996) (citing 1993 statistics). A retired worker is "dually entitled" if she is entitled to receive both a worker benefit based on her own earnings record and an additional derivative benefit as a spouse or survivor. *Id.* See also Sandell & Iams, *supra* note 18, at 282.

²² See U.S. GEN. ACCT. OFF., *SOCIAL SECURITY: DIFFERENT APPROACHES FOR ADDRESSING PROGRAM INSOLVENCY* 60 (1998) (stating that "the role of spousal benefits within the existing program structure may be declining in importance").

²³ See Anne L. Alstott, *Tax Policy and Feminism: Competing Goals and Institutional Choices*, 96 COLUM. L. REV. 2001, 2062 (1996) (noting that, despite increased participation in the work force, "[e]ven younger generations of women . . . do not duplicate men's patterns of market work").

²⁴ Since 1980, the ratio of women's to men's median full-time covered earnings has risen from around 60 percent to around 70 percent. See U.S. GEN. ACCT. OFF., *supra* note 21, at 31; see also LOIS SHAW ET AL., *THE IMPACT OF SOCIAL SECURITY REFORM ON WOMEN* 14 (Institute for Women's Policy Research, 1998) (noting that, despite increased work experience, women still tend to work fewer full-time years and earn lower wages than men).

²⁵ See SHAW, *supra* note 24, at 14.

B. Social Adequacy and Individual Equity

From the outset, the social security system has sought to accommodate conflicting goals of "social adequacy" and "individual equity." During the system's long "start-up" phase, when nearly all participants received a generous return on their payroll contributions, the benefit structure achieved wide acceptance. More recently, however, concerns about long-term financial solvency and declining rates of return have focused attention on inequities and inefficiencies in the existing system. In particular, the role of spousal and survivor benefits has come under renewed scrutiny from several quarters.

Viewed from the perspective of social adequacy, the spousal benefit provisions function poorly.²⁶ When these provisions were first enacted in 1939, relatively few women worked outside the home and it may have seemed reasonable to view spousal benefits as an anti-poverty measure.²⁷ Today, however, it is difficult to justify spousal benefits for one-earner families on the basis of need. Such benefits are paid primarily to spouses of high-wage workers who tend to have access to tax-favored pension plans and other sources of private savings.²⁸ Spousal benefits also cannot be viewed as an imputed or "shadow" wage for housework performed by the spouse, since the amount of such benefits rises proportionately with the primary earner's own worker benefit.²⁹ Spousal benefits are often inversely

²⁶ See Burke & McCouch, *supra* note 11, at 1230.

²⁷ See Peter W. Martin, *Social Security Benefits for Spouses*, 63 CORNELL L. REV. 789, 799-800 (noting that spousal benefits "could reasonably have been called an antipoverty measure"). See also Karen C. Holden, *Social Security and the Economic Security of Women: Is It Fair?*, in SOCIAL SECURITY IN THE 21ST CENTURY 91, 98-99 (Eric R. Kingson & James H. Schulz eds., 1997); Burke & McCouch, *supra* note 11, at 1214-15 (noting early expectation that spousal benefits would wither away as more women entered the work force and became entitled to worker benefits).

²⁸ See Holden, *supra* note 27, at 99; see also Karen C. Holden, *Supplemental OASI Benefits to Homemakers Through Current Spouse Benefits, a Homemaker Credit, and Child-Care Drop-Out Years*, in A CHALLENGE TO SOCIAL SECURITY: THE CHANGING ROLES OF WOMEN AND MEN IN AMERICAN SOCIETY 41, 48 (Richard V. Burkhauser & Karen C. Holden eds., 1982) (hereinafter Holden, *Supplemental OASI Benefits*) (noting that spousal benefits "are not paid primarily to beneficiary couples most in need of additional income").

²⁹ See Burke & McCouch, *supra* note 11, at 1229-30. See also C. EUGENE STEUERLE & JON M. BAKIJA, *RETOOLING SOCIAL SECURITY FOR THE 21ST CENTURY*:

related to need, resulting in an upside-down subsidy to middle-and high-income couples — a “dubious redistributive achievement.”³⁰

It is also impossible to justify the existing spousal benefit provisions on grounds of individual equity. In an actuarially fair system, married couples would bear the cost of spousal benefits through higher payroll taxes. Because unmarried individuals in effect purchase “redundant” spousal and survivor benefits, the existing system confers only a marriage bonus and no marriage penalty.³¹ The spousal benefit provisions redistribute from unmarried individuals to married couples and from two-earner couples to one-earner couples.³² In the case of a two-earner couple in which wages are split equally, the couple’s combined benefits are equal to twice the benefit received by an unmarried individual with half the couple’s combined wages. Presumably, the cost of maintaining a given standard of living for a married couple is less than twice the cost for an unmarried individual. Any reduction in the two-earner couple’s combined benefits would be politically unattractive, however, due to the resulting marriage penalty. Even so, if the two-earner couple’s combined benefits are presumptively adequate to satisfy their consumption needs, it is difficult to justify providing higher benefits to a one-earner couple with identical total wages.³³

Spousal benefits, though originally conceived as a “supplemental transfer to more needy beneficiaries,”³⁴ seem increasingly anachronistic in view of women’s changing role in the workplace. By 2015, it is expected that 60 percent of newly-retired married women will receive worker-only benefits; 35 percent will be

RIGHT AND WRONG APPROACHES TO REFORM 209 (1994).

³⁰ Richard V. Burkhauser, *Alternative Social-Security Responses to the Changing Roles of Women and Men*, in *CONTROLLING THE COST OF SOCIAL SECURITY* 141, 146 (Colin D. Campbell ed., 1984).

³¹ See Burke & McCouch, *supra* note 11, at 1230.

³² In the absence of spousal benefits, a one-earner couple might receive lower benefits than an equal-income two-earner couple due to the progressive benefit formula; thus, spousal benefits may tend to equalize the benefits received by one- and two-earner couples with identical wages. See Holden, *supra* note 27, at 99.

³³ See *id.* at 97; see also Michael D. Hurd, *Adequacy and Equity Issues: Another View*, in *SOCIAL SECURITY IN THE 21ST CENTURY* 219, 223 (Eric R. Kingson & James H. Schulz eds., 1997).

³⁴ Holden, *Supplemental OASI Benefits*, *supra* note 28, at 51.

dually-entitled; and only 5 percent will receive spouse-only benefits.³⁵ Abstracting for the moment from transitional problems, it would seem perverse to tailor a system of spousal benefits to match the experience of a distinct minority of married women. A more rational benefit structure would take into account the increasing participation of women in the work force and the reduced wage differential between spouses. For example, the spousal benefit might be scaled back from 50 percent to 33 1/3 percent of the primary worker benefit for low- and moderate-wage couples, and capped or eliminated for high-wage couples.³⁶

Even if spousal benefits recede in importance, survivor benefits are likely to continue to play a significant role. Under the dual-entitlement rule, most widows are likely to receive survivor benefits based on their husbands' earnings records. Even women who initially receive benefits based in whole or in part on their own earnings records upon retirement will typically switch to survivor benefits when they become widows, since their own workers' benefits are unlikely to exceed those of their husbands.³⁷ Thus, for most women, increased participation in the work force is unlikely to generate higher survivor benefits; indeed, more equal sharing of earnings between spouses may actually erode the value of survivor benefits.³⁸

The existing system of survivor benefits is open to criticism, especially on grounds of social adequacy. Although the causes of poverty among widows are complex and incompletely understood, it

³⁵ See ADVISORY COUNCIL REP., *supra* note 9, at 143 (statement of Edith U. Fierst).

³⁶ See U.S. GEN. ACCT. OFF., *supra* note 21, at 45-46; see also STEUERLE & BAKIJA, *supra* note 29, at 214 (suggesting cap on spousal benefits for high-wage couples).

³⁷ See ADVISORY COUNCIL REP., *supra* note 9, at 142 (statement of Edith U. Fierst). This pattern is not expected to change greatly in future generations because, on average, (1) women's earnings will continue to be lower than men's and (2) women's work careers will continue to be shorter than men's. Only around 20 percent of married women retiring in 2015 are expected to have worker benefits greater than those of their husbands. *Id.*

³⁸ See Holden, *supra* note 27, at 98 ("Ironically, increased sharing of earning roles between spouses, assumed to increase women's access to protective wage-based insurance, substantially lowers the economic protection provided to them as widows . . .").

is clear that many married women face a significantly increased risk of poverty following the death of their husbands.³⁹ According to one estimate, the cost of maintaining a given standard of living for a surviving spouse is around 80 percent of the total cost for a married couple.⁴⁰ Social security benefits ranging from 50 percent to 67 percent of the couple's combined benefits fall short of this benchmark. The steep drop in social security benefits may be an important factor in explaining the high rate of poverty among widows. Since almost two-thirds of elderly women in poverty are widows, improving survivor benefits would be one way of addressing the needs of a particularly vulnerable group.⁴¹ Any reform of survivor benefits should also attempt to remedy the existing disparity in replacement rates between one-earner and two-earner married couples.

C. Earnings Sharing

In the debate over social security reform, the concept of "earnings sharing" emerges as a constantly recurring theme.⁴² In general, earnings sharing would treat each spouse as earning one-half of the couple's combined wages during marriage, thereby reallocating a portion of the higher-wage spouse's earnings record to the lower-wage spouse. One corollary would be the elimination of spousal benefits, since each spouse would be entitled to worker benefits based on one-half of the couple's combined earnings. Furthermore, under

³⁹ See Sandell & Iams, *supra* note 18, at 281; Holden, *supra* note 12, at 361 ("Why women on average suffer a large decline in income upon their husbands' deaths is not fully understood."). See also Michael D. Hurd, *Research on the Elderly: Economic Status, Retirement, and Consumption Saving*, 28 J. ECON. LIT. 565, 582-85 (1990) (discussing causes of poverty among widows, including low lifetime earnings).

⁴⁰ See NAT'L ECON. COUNCIL, *supra* note 15, at 14 (noting that official poverty thresholds imply that a widow needs 79 percent of couple's income to maintain pre-widowhood consumption level). Other factors contributing to widows' increased risk of poverty include (1) poor economic status prior to widowhood, (2) loss of a husband's pension income, and (3) decline in income from other assets. *Id.*

⁴¹ See Sandell & Iams, *supra* note 18, at 279-80 (noting that SSI would be more target efficient but that significant increases in SSI are unlikely given the current budget and political outlook).

⁴² See Burke & McCouch, *supra* note 11, at 1232-37. See also U.S. GEN. ACCT. OFF., *supra* note 21, at 41-43.

most earnings sharing proposals, a surviving spouse would inherit the deceased spouse's earnings record accumulated during marriage.⁴³ Although earnings sharing has been widely recognized as a technically viable solution for some of the most vexing problems in the existing benefit structure, political obstacles to its implementation have so far proved insurmountable.⁴⁴

In terms of "winners" and "losers," earnings sharing would produce gains for two-earner couples, primarily at the expense of one-earner couples.⁴⁵ Specific proposals have included special adjustments, based on elaborate simulations, to mitigate hardship for specific groups of women, but one unanticipated consequence of such fine tuning has been to call attention to potential losers who have rallied in support of the existing benefit structure.⁴⁶ Some critics argue that the benefits of earnings sharing would be achieved only in the long run, when women's increased work force participation might have mitigated many of the problems that earnings sharing seeks to address.⁴⁷ Others question whether the view of marriage as an economic "partnership" is sufficiently widespread to justify any earnings sharing proposal.⁴⁸

The earnings sharing debate illustrates the difficulty of implementing comprehensive reform and the inevitability of tradeoffs between conflicting objectives.⁴⁹ Most proponents of earnings sharing

⁴³ See Burke & McCouch, *supra* note 11, at 1233. See also U.S. GEN. ACCT. OFF., *supra* note 21, at 42 (noting that without inheritance of earnings credits, pure earnings sharing would reduce benefits for many surviving spouses).

⁴⁴ See Burke & McCouch, *supra* note 11, at 1232-33.

⁴⁵ See Jane A. Ross & Melinda M. Upp, *The Treatment of Women in the Social Security System, 1970-1988*, in EQUAL TREATMENT IN SOCIAL SECURITY 69, 86-87 (Int'l Soc. Security Ass'n, 1988).

⁴⁶ See *id.* at 88-89. One commentator notes that the earnings sharing approach has failed to garner political support "[p]rimarily because the proposal is so well balanced that no one is willing to fight for it. The winners and losers are individuals, not groups." *Id.* See also Edith U. Fierst, *Social Security and Women: Why Reasonableness Doesn't Always Work*, in 9 OF CURRENT INTEREST FROM THE POLICY CENTER ON AGING 1, 8 (Brandeis Univ., The Heller School, Feb. 1990).

⁴⁷ See Burke & McCouch, *supra* note 11, at 1235; Ross & Upp, *supra* note 45, at 89.

⁴⁸ See Burke & McCouch, *supra* note 11, at 1235-36.

⁴⁹ See Alstott, *supra* note 23, at 2066.

recognize that under any revenue-neutral proposal benefits for one group will necessarily come at the expense of other groups. At the same time, any "no-loser" proposal that would increase benefits for some groups without cutting benefits for others seems unrealistic, given current concerns about the system's long-term financial solvency. If "leveling up" is no longer a viable solution to conflicts between competing constituencies, the prospects for implementing any version of earnings sharing within the existing system look even bleaker today than in the early 1980's.⁵⁰

II. PRIVATIZATION AND ITS IMPACT ON WOMEN

In the current social security debate, "privatization" generally refers to the creation of individual private accounts with individual control over investment of funds in the accounts.⁵¹ In a recent report, the Advisory Council on Social Security proposes three alternative approaches to social security reform. One of these proposals seeks to retain the existing system more or less intact,⁵² while the other two respectively recommend weaker and stronger versions of privatization. The latter two proposals raise serious concerns about the direction of social security reform and the impact of privatization on women.

A. Privatization Proposals

The more moderate of the two privatization proposals, known as the "individual account" (IA) plan, would retain the existing 12.4

⁵⁰ But see McCaffery, *supra* note 7, at 1001 (announcing that policy recommendations are "close at hand" and predicting that "the direction of change is clear"). Whether earnings sharing would be a more viable option under a privatized system remains unclear. See *infra* notes 93-99 and accompanying text.

⁵¹ See U.S. GEN. ACCT. OFF., *supra* note 22, at 31. Advance funding, though often viewed as an important corollary of privatization, could also be accomplished under the existing system by increasing the size of the trust funds. See Diamond, *supra* note 16, at 57-61.

⁵² This proposal, known as the "maintain benefits" (MB) plan, seeks to restore solvency by trimming back benefits and investing surplus social security funds in the stock market. See ADVISORY COUNCIL REP., *supra* note 9, at 25-27. The MB plan was generally supported by six members of the Advisory Council. See *id.* at 25 n.12.

percent payroll tax to fund reduced social security benefits while mandating an additional 1.6 percent payroll tax to fund private accounts.⁵³ The more aggressive proposal, known as the "personal security account" (PSA) plan, would retain the existing payroll tax but would divert around 40 percent of amounts collected to fund private accounts. The PSA plan would also replace the existing progressive benefit structure with a two-tier structure comprising a universal flat minimum benefit supplemented by private accounts.⁵⁴

In terms of the basic benefit structure, the PSA plan would have a considerably more drastic and immediate impact than the IA plan. In general, the IA plan would preserve the existing structure of workers' benefits — albeit at reduced levels — and would ensure at least an adequate level of retirement income for most workers regardless of the investment return on their private accounts. By contrast, the first-tier benefit under the PSA plan would fall well below the poverty level for a retired worker.⁵⁵ The low first-tier benefit flows from the decision to divert around 40 percent of payroll tax collections to fund private accounts under the PSA plan. Critics note that under the PSA plan the first-tier benefit would be conspicuous, marginal, and ultimately vulnerable to reduction or elimination.⁵⁶ In the long run, the IA plan raises a similar concern that introducing a defined-contribution component might ultimately undermine the traditional defined-benefit component of the system.⁵⁷

⁵³ See *id.* at 28-29. The IA plan would cut back disproportionately on benefits for middle- and high-wage workers, thereby enhancing the progressivity of the benefit formula. See *id.* at 29 (proposing that 32 percent and 15 percent brackets in existing benefit formula be gradually cut back to 22.4 percent and 10.5 percent, respectively). The IA plan was supported by two members of the Council, including the Advisory Council's chairman, Edward M. Gramlich. *Id.* at 28 n.14.

⁵⁴ See *id.* at 30-33. Given the substantial diversion of payroll tax collections to fund PSAs, it would be necessary to issue large amounts of government debt to pay benefits to current recipients. To amortize this new borrowing, it would be necessary to collect an additional 1.52 percent payroll tax over a 72-year period. *Id.* at 30. The PSA plan was supported by five members of the Council. *Id.* at 30 n.20.

⁵⁵ The first-tier benefit would amount to \$410 a month in 1996 dollars, or 65 percent of the poverty level for an elderly person living alone. See *id.* at 31.

⁵⁶ See *id.* at 71; see also Jerry L. Mashaw & Theodore R. Marmor, *The Great Social Security Scare*, 29 AM. PROSPECT 30-37 (Nov.-Dec. 1996).

⁵⁷ See Edward M. Gramlich, *Reforming Social Security?*, in POSITIONING

The IA plan would revise the existing system of spousal and survivor benefits. Under the IA plan, the surviving spouse would be entitled to a benefit equal to the highest of (1) his or her own worker benefit, (2) 100 percent of the deceased spouse's own worker benefit, or (3) 75 percent of the couple's combined benefit prior to the first spouse's death.⁵⁸ To offset a portion of the cost of the enhanced survivor benefit, the IA plan would gradually reduce the spousal benefit from 50 percent to 33 percent of the primary worker benefit.⁵⁹ Implicitly, the IA plan would also shift a portion of the cost of the enhanced survivor benefit to never-married workers who by definition are ineligible for survivor benefits.⁶⁰

Survivor benefits based on the couple's combined earnings would improve the treatment of two-earner couples relative to one-earner couples. Survivor benefits for one-earner couples would remain unchanged — the widow would still be entitled to a survivor benefit equal to 100 percent of the deceased spouse's own worker benefit.⁶¹ Two-earner couples, however, would receive enhanced survivor benefits. In a couple in which wages were split equally, the surviving spouse would be entitled to a benefit equal to 150 percent of her own worker benefit.⁶² Depending on the relative wages of the spouses in a two-earner couple, the surviving spouse's benefit, expressed as a percentage of the couple's combined benefits, might be

PENSIONS FOR THE TWENTY-FIRST CENTURY 220, 226-27 (Michael S. Gordon et al. eds., 1997).

⁵⁸ See ADVISORY COUNCIL REP., *supra* note 9, at 29.

⁵⁹ Increasing survivor benefits to 75 percent of the couple's combined benefits and reducing spousal benefits from 50 percent to 33 percent results in a net cost of 0.15 percent of payroll, adding 7 percent to social security's long-term actuarial deficit. See *id.* at 19.

⁶⁰ See Sandell & Iams, *supra* note 18, at 286. Furthermore, by reducing the spousal benefit the IA plan might have adverse consequences for divorced or separated women. See ADVISORY COUNCIL REP., *supra* note 9, at 144-45 (statement of Edith U. Fierst). See also SHAW, *supra* note 24, at 8-9.

⁶¹ While both spouses are alive, a one-earner couple would receive a combined benefit equal to 133 percent of the primary earner's own worker benefit; after the death of one spouse, the survivor would receive a benefit equal to 100 percent of the deceased spouse's worker benefit (or, equivalently, 75 percent of the couple's 133 percent combined benefits).

⁶² This is equivalent to 75 percent of the couple's combined 200 percent benefit. By contrast, under present law, the widow would receive her own worker benefit with no additional survivor benefit.

higher but could never be lower than under current law. A widow would receive a higher benefit whenever her own worker benefit exceeded one-third of her husband's worker benefit.⁶³

Under the PSA plan, when fully phased in, the non-wage-earning spouse in a one-earner couple would be entitled to a spousal benefit equal to 50 percent of the flat minimum benefit.⁶⁴ The survivor benefit would be set equal to 75 percent of the couple's combined benefits, though the percentage would be calculated on a much smaller base.⁶⁵ Thus, for a one-earner couple, the survivor benefit would be equal to 112.5 percent of the flat minimum benefit.⁶⁶ In the case of a two-earner couple in which both spouses had full working careers (i.e., 35 years of covered employment), the survivor benefit would be equal to 150 percent of the flat minimum benefit.⁶⁷ The range of survivor benefits would be significantly less than the average benefit currently paid to widows age 65 and older.⁶⁸ And, interestingly, the survivor benefit for a widow with no earnings record of her own would be higher than the flat minimum benefit for a retired worker.

The IA plan would require that benefits be paid in the form of a single-life annuity (in the case of an unmarried worker) or a joint-and-survivor annuity (in the case of a married worker, subject to

⁶³ For example, if *H* and *W* were entitled to worker benefits of \$12 and \$4, respectively, then after *H*'s death *W* would receive a survivor benefit of \$12, equal to 100 percent of *H*'s worker benefit (or, equivalently, 75 percent of *H*'s and *W*'s \$16 combined benefits). If *W*'s worker benefit were \$8, she would receive a survivor's benefit of \$15 (75 percent of \$20); thus, a \$4 increase in *W*'s worker benefit would generate a \$3 increase in her survivor benefit (i.e., 75 percent of \$4). See ADVISORY COUNCIL REP., *supra* note 9, at 145 (statement of Edith U. Fierst) (noting that under the IA plan the amount of the survivor benefit would rise in proportion to the lower-wage spouse's earnings record; the higher the secondary earner's own worker benefit, the higher the survivor benefit).

⁶⁴ See ADVISORY COUNCIL REP., *supra* note 9, at 32.

⁶⁵ See *id.*

⁶⁶ A 112.5 percent survivor benefit is equivalent to 75 percent of 150 percent of the flat minimum benefit. In 1996 dollars, this would amount to a monthly benefit of \$461.

⁶⁷ A 150 percent survivor benefit is equivalent to 75 percent of 200 percent of the flat minimum benefit. In 1996 dollars, this would amount to a monthly benefit of \$615.

⁶⁸ See Holden, *supra* note 12, at 362.

waiver with the spouse's consent).⁶⁹ By contrast, the PSA plan would not require annuitization of private accounts and would apparently permit workers to dispose by will of any balance remaining in their private accounts at death.⁷⁰ Thus, a widow's survivor benefit might (or might not) be supplemented by income from other sources, including her own private account, an account inherited from her deceased husband, or other savings. While some widows might do quite well under such a system, the PSA plan would introduce new risks and uncertainties for surviving spouses.

B. Women as Workers

A privatized system may pose special risks for women as workers. Since women have, on average, lower wages and fewer years of covered employment than men, they would generally fare less well under any system that links retirement security more closely to individual lifetime earnings. Conversely, women would generally fare better under a system that maintains or enhances the existing progressive distribution of benefits. On this score, it is likely that most women workers would prefer the IA plan to the PSA plan, since the IA plan privatizes a much smaller portion of the social security system. By one recent estimate, the IA plan would reduce basic benefits for the average earner by 17 percent, while the PSA plan would reduce the basic first-tier benefit to around 47 percent of the benefit paid to the average earner under the existing system.⁷¹ The difference flows from the fact that the PSA plan would divert a much greater percentage of payroll taxes to private accounts and hence require much more drastic benefit cuts in the non-privatized portion of the system.

Some benefit reductions may fall more heavily on women than on men. For example, if cost-of-living adjustments fell below the rate of inflation, the greatest cumulative burden would fall on long-lived individuals, typically elderly widows.⁷² Similarly,

⁶⁹ See ADVISORY COUNCIL REP., *supra* note 9, at 28.

⁷⁰ See *id.* at 32.

⁷¹ See U.S. GEN. ACCT. OFF., SOCIAL SECURITY REFORM: IMPLICATIONS FOR THE FINANCIAL WELL-BEING OF WOMEN 8 (1997) (statement of Jane L. Ross).

⁷² See U.S. GEN. ACCT. OFF., *supra* note 22, at 46-47 (noting that reduction in

increasing the computation period for benefits from 35 to 38 or 40 years of covered employment would have a disproportionate impact on women. By one estimate, less than 30 percent of women retiring in 2020 will have 38 years of covered employment, compared to almost 60 percent of men.⁷³ Viewed separately, each particular change in benefits may appear relatively minor, but, in the aggregate, the proposed changes could significantly reduce benefits for women relative to men.⁷⁴

For women as workers, a crucial issue is whether the additional amounts accumulated in their private accounts will offset the reduced benefits under the non-privatized portion of the system. Because women earn less than men, on average, their initial contributions to private accounts will also be lower. The burden of administrative expenses will fall disproportionately on small accounts, further eroding their value. Furthermore, recent research suggests that women may be more risk averse than men in making investment decisions.⁷⁵ To the extent that women invest their private accounts in low-risk, low-yield assets, they will fail to realize the full purported benefits of privatization in the form of higher (albeit riskier) returns.⁷⁶ Thus, differences in investment behavior could exacerbate disparities in the levels of retirement security for women and men under a

cost-of-living adjustment from 3.5 percent to 2.5 percent would erode the purchasing power of benefits by 22 percent after 25 years); see also MICHAEL J. BOSKIN ET AL., ADVISORY COMM'N TO STUDY THE CONSUMER PRICE INDEX, TOWARD A MORE ACCURATE MEASURE OF THE COST OF LIVING, 104th CONG., 2D SESS. 1, 55-56 (Comm. Print 1996) (concluding that consumer price index overstates actual rate of price inflation and thus overcompensates beneficiaries for changes in true cost of living).

⁷³ See U.S. GEN. ACCT. OFF., *supra* note 20, at 12.

⁷⁴ See *id.* at 13.

⁷⁵ See *id.* at 9-10 (noting "evidence suggesting that women are generally more risk averse than men in financial decisionmaking"); see also Richard P. Hinz et al., *Are Women More Conservative Investors? Gender Differences in Participant-Directed Pension Investments*, in POSITIONING PENSIONS FOR THE TWENTY-FIRST CENTURY 91, 99-100 (Michael S. Gordon et al. eds., 1997) (analyzing data on participants in the federal Thrift Savings Plan (TSP), and concluding that "women appear to invest their pension assets more conservatively than men").

⁷⁶ Nevertheless, proponents of privatization reject the notion that women would achieve lower investment returns than men under a privatized system. See ADVISORY COUNCIL REP., *supra* note 9, at 123 (statement of Joan T. Bok et al.) ("We know of no evidence that women systematically make inferior investment choices.").

privatized system.⁷⁷ Of course, improved financial education might help both men and women to make better investment decisions, but it is unclear how this would be accomplished under a privatized system.⁷⁸

Women may also face a disadvantage in the annuities market when they begin to draw down their private accounts. The existing market for annuities is quite thin, due in part to problems of adverse selection, and the cost of annuities tends to be correspondingly high compared to the present value of the stream of annuity payments.⁷⁹ Reliance on the annuity market raises the further issue of whether private insurers should be permitted to use sex-differentiated mortality tables in issuing individual annuity policies.⁸⁰ Under sex-differentiated tables, men and women of the same age who purchase individual annuities for identical lump-sum payments would receive different monthly benefits. Despite their equivalence in present value terms, the women's monthly benefits would be lower than the men's, due to the difference in their life expectancies.⁸¹ Thus, even if the

⁷⁷ See Hinz et al., *supra* note 75, at 99.

⁷⁸ See U.S. GEN. ACCT. OFF., *supra* note 20, at 14. Numerous studies suggest that the overall level of financial literacy is extremely low. See B. Douglas Bernheim, *Adequacy of Savings for Retirement and the Role of Economic Literacy*, in RETIREMENT IN THE 21ST CENTURY: READY OR NOT? 73, 80 (Dallas L. Salisbury & Nora Super Jones eds., 1994).

⁷⁹ See ADVISORY COUNCIL REP., *supra* note 9, at 71 (stating that "private annuities typically do not offer a fair return for the average person"); see also OLIVIA S. MITCHELL ET AL., NEW EVIDENCE ON THE MONEY'S WORTH OF INDIVIDUAL ANNUITIES 2 (National Bureau of Econ. Research Working Paper No. 6002, 1997) (concluding that expected present value of annuity payments per premium dollar is "well below unity," i.e., 80 to 85 percent for an average 65-year-old). By creating a much larger pool of potential annuitants, a privatized system might ameliorate imperfections in the existing annuities market.

⁸⁰ Insurers are prohibited from using sex-differentiated actuarial tables to calculate benefits under group annuity policies issued as part of an employee benefit plan, but no such prohibition applies in the case of individual annuity policies. See JAN WALLISER, CONG. BUDGET OFF., SOCIAL SECURITY PRIVATIZATION AND THE ANNUITIES MARKET 12 (Feb. 1998) ("with the exception of TIAA-CREF, [insurers] do differentiate individual annuity holders by sex"); see also *Arizona Governing Comm. for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 463 U.S. 1073, 1079-86 (1983) (holding that Title VII prohibits employers from offering retirement annuities based on sex-differentiated actuarial tables).

⁸¹ See U.S. GEN. ACCT. OFF., *supra* note 20, at 10-11; see also *id.* at 12 n.16 (noting concern about whether insurers would issue individual annuities if they were

women and the men had identical contributions, investment outcomes, and account balances at retirement, the women might end up with substantially lower annuity payments and a correspondingly lower standard of living in retirement. This outcome might be perceived as unfair compared to the current system, which emphasizes "equal living standards for equal contributions."⁸² These problems could, of course, be addressed by mandating the use of unisex tables, with their concomitant redistribution in favor of women.

C. Women as Wives and Widows

One incidental effect of privatization would be to reduce disparities between one-earner and two-earner married couples. Indeed, in a fully privatized system, with no derivative benefits for spouses or survivors, such disparities would disappear completely. Although neither the IA plan nor the PSA plan goes this far, the PSA plan takes a long step in the direction of full privatization. Under the PSA plan, derivative benefits would still be available for spouses and survivors, but the scope of these benefits would be sharply constrained by the conspicuously low level of the flat first-tier benefit. Concerns about the long-term viability of the non-privatized portion of the system cast further doubt on the role of derivative benefits under the PSA plan.

The PSA plan would substantially narrow the existing gap between one-earner and two-earner couples. Proponents argue that "women would generally fare relatively well" under the PSA plan, asserting that "[t]he more typical situation for women in the future will be that of being a partner in a two-earner couple, where both spouses have had relatively full working careers."⁸³ Higher returns to two-earner couples under a privatized system, however, would not necessarily mean greater protection for surviving spouses. Due to differences in age at marriage and in longevity, most women will spend a significant portion of their retirement years alone. For older

required to use unisex tables).

⁸² *Id.* at 15.

⁸³ ADVISORY COUNCIL REP., *supra* note 9, at 124 (statement of Joan T. Bok et al.).

women, who on average may expect to remain widowed for 17 years, the death of a husband represents a "risky economic transition."⁸⁴ Even in a two-earner couple, the surviving spouse may be worse off under a privatized system unless she inherits her deceased spouse's private account.

The existing system provides a mandatory survivor benefit for a deceased worker's eligible surviving spouse. By comparison, neither the IA plan nor the PSA plan would ensure the same level of protection for the surviving spouse. The IA plan would require that each private account be paid out either to the worker as a single-life annuity or to the worker and the spouse as an actuarially equivalent joint-and-survivor annuity.⁸⁵ The joint-and-survivor annuity would be the default setting in the case of a married couple, but with the spouse's consent the worker could elect to receive a single-life annuity instead. This aspect of the IA plan is modeled on the treatment of qualified pension plans under ERISA, which permits a participant to waive the joint-and-survivor annuity with the written consent of the non-participant spouse.⁸⁶ The ERISA provision was added in 1984 to provide a measure of protection for the surviving spouse of a deceased participant.⁸⁷ Although the percentage of pension benefits paid in the form of joint-and-survivor annuities has increased substantially since the enactment of this provision, nearly 25 percent of all married participants continue to elect alternative forms of payment.⁸⁸

⁸⁴ BURKHAUSER & SMEEDING, *supra* note 4, at 2.

⁸⁵ The joint-and-survivor annuity would pay lower benefits while both spouses were alive but would continue to pay benefits to the surviving spouse for life. See ADVISORY COUNCIL REP., *supra* note 9, at 28.

⁸⁶ See 29 U.S.C. § 1055 (1994).

⁸⁷ See U.S. GEN. ACCT. OFF., *supra* note 71, at 6 ("This requirement [of written spousal consent] was prompted partly by testimony before the Congress by widows who stated that they were financially unprepared at their husbands' death because they were unaware of their husbands' choice not to take a joint and survivor annuity. Through the spousal consent requirement, the Congress envisioned that, among other things, a greater percentage of married men would retain the joint and survivor annuity and give their spouses the opportunity to receive survivor benefits."). See also Camilla E. Watson, *Broken Promises Revisited: The Window of Vulnerability for Surviving Spouses Under ERISA*, 76 IOWA L. REV. 431, 472-86 (1991).

⁸⁸ See ADVISORY COUNCIL REP., *supra* note 9, at 154 n.27 (statement of Edith U. Fierst).

The PSA plan would provide even less protection for surviving spouses. It would permit a retired worker to withdraw the balance in his or her private account either in a lump sum or in installments. By lifting all restrictions on the form of payments, the PSA plan exposes retired workers and their spouses to an increased risk of poverty in old age. For example, a husband and wife who retire at age 62 in 2010 would have to estimate their consumption needs for a period of nearly 30 years.⁸⁹ If their resources turn out to be inadequate, most of the hardship is likely to fall on the wife, who can be expected to survive her husband for a prolonged period. Unlike the PSA plan, the IA plan would at least give the surviving spouse the right to receive annuity payments for her life. While such protection might ultimately fall short of the spouse's needs, the IA plan comes much closer than the PSA plan to providing adequate benefits for surviving spouses.

III. OPTIONS FOR REFORM

Much of the debate over social security reform appears to be fueled less by different assessments of the likely economic consequences of privatization than by divergent political expectations and value judgments.⁹⁰ While privatization may be attractive to those who place a high value on individual equity and unconstrained personal choice, the plans outlined by proponents of privatization raise serious concerns in terms of their likely impact on women. In particular, the PSA plan is open to criticism for its refusal to incorporate two features of special significance for women: earnings sharing and mandatory annuitization. In considering alternative reform proposals, it is important to recognize that privatization is conceptually distinct from, but by no means incompatible with, earnings sharing and mandatory annuitization. Indeed, both features could be accommodated either within a privatized system or within the existing system.

⁸⁹ See BURKHAUSER & SMEEDING, *supra* note 4, at 10.

⁹⁰ See Diamond, *supra* note 16, at 40, 63.

A. Earnings Sharing

Even proponents of privatization concede that the PSA plan has "serious shortcomings with respect to women's well-being."⁹¹ In particular, unrestricted individual ownership of private accounts could leave many widows worse off than under the existing system. The PSA plan would permit a retired worker to spend down his or her private account or leave any remaining balance at death to other beneficiaries, with no obligation to share any portion with a spouse. As critics have observed, the PSA plan would provide "new opportunities for financial abandonment" of spouses.⁹²

This problem could be ameliorated through mandatory earnings sharing. Under one proposal, known as the "personal security system" (PSS) plan, the aggregate contributions of each married couple would be split equally between the spouses and each spouse's share would be deposited in his or her individual private account.⁹³ This approach would protect the lower-wage or non-wage-earning spouse by crediting her private account with a portion of the higher-wage spouse's earnings. Under the PSS plan, no amounts could be withdrawn from an individual's private account until age 65. At age 65, account balances of all cohort members would be pooled together and the government would purchase a single-life annuity for each cohort member in proportion to the balance in his or her private account. The PSS plan would also provide a redistributive component by requiring matching contributions from the government to the private accounts of low-wage earners "on a progressive basis."⁹⁴

Using the PSS plan as the baseline, one study purports to demonstrate empirically that women would be "significantly better off" under a fully privatized system with earnings sharing than under

⁹¹ EKATERINA SHIRLEY & PETER SPIEGLER, *THE BENEFITS OF SOCIAL SECURITY PRIVATIZATION FOR WOMEN* 7 (Cato Project on Soc. Security Privatization No. 12, 1998).

⁹² ADVISORY COUNCIL REP., *supra* note 9, at 72 (statement of Robert M. Ball et al.).

⁹³ See Laurence J. Kotlikoff & Jeffrey Sachs, *It's High Time to Privatize*, 15 BROOKINGS REV. 16, 20 (Summer 1997).

⁹⁴ See *id.* In order to finance the transition from the existing system, the PSS plan would impose a value-added or retail sales tax initially set at around 10 percent and declining to a permanent 2 percent tax over a 40-year period. *Id.* at 22.

the existing system.⁹⁵ On closer inspection, however, the claim that privatization would offer "tangible financial benefits to women" seems overdrawn.⁹⁶ The effects of earnings sharing should not be confused with those of privatization; the two concepts are analytically distinct. Thus, given the wage differential between men and women, it should come as no surprise that women as a group would gain from earnings sharing. This gain, however, should not be portrayed as an advantage of privatization.⁹⁷

If earnings sharing is desirable, it can be accommodated either within a system of private accounts or within a collective social security system.⁹⁸ Nevertheless, as a practical matter, it might be easier to implement earnings sharing as part of a more general transition to a privatized system. A system of private accounts would establish a much closer linkage between individual contributions and benefits, but might also raise serious problems of social adequacy. Even if average benefits remained unchanged, the elimination of spousal and survivor benefits in a privatized system would fundamentally change the existing distribution of benefits among various types of families.⁹⁹ The biggest winners would be high-wage two-earner couples.

⁹⁵ See SHIRLEY & SPIEGLER, *supra* note 91, at 16.

⁹⁶ *Id.* Indeed, it is not at all clear that investing payroll contributions in the stock market would make everyone better off. See John Geanakoplos et al., *Would a Privatized Social Security System Really Pay a Higher Rate of Return?*, in FRAMING THE SOCIAL SECURITY DEBATE: VALUES, POLITICS, AND ECONOMICS 137, 148 (R. Douglas Arnold et al. eds., 1998) (noting that the argument "ignores transition costs . . . [and] does not account for changes in risk borne by participants").

⁹⁷ The study also ignores transition costs and implicitly assigns a zero value to the insurance component of defined-benefit plans. See SHIRLEY & SPIEGLER, *supra* note 91, at 14.

⁹⁸ See Michael J. Boskin et al., *Personal Security Accounts: A Proposal for Fundamental Social Security Reform*, in SOCIAL SECURITY AND PRIVATE PENSIONS: PROVIDING FOR RETIREMENT IN THE TWENTY-FIRST CENTURY 179 (Susan M. Wachter ed., 1988) (proposing an individual account system with earnings sharing and progressive matching *within* social security). Boskin's proposal should not be confused with the similarly-named PSA plan; the two proposals are fundamentally different.

⁹⁹ See Diamond, *supra* note 16, at 47-48.

B. Mandatory Annuitization

No serious privatization proposal can ignore the issue of annuitization. The PSA plan would permit individual workers to withdraw any part or all of their private accounts at retirement and to leave any remaining balance at death to other beneficiaries. Proponents of the PSA plan considered, but rejected, the possibility of requiring that some minimal level of benefits be paid out in the form of an annuity.¹⁰⁰ The rejection of mandatory annuitization reflects a view of private accounts as an accumulation of unrestricted personal wealth rather than as an earmarked source of retirement income.¹⁰¹ According to this view, mandatory annuitization would encourage unduly high levels of consumption and penalize "thrifty" retirees who might desire to "preserve some of their PSA accumulations to pass on to their heirs."¹⁰²

The PSA plan highlights a fundamental contradiction between the rationale for forced retirement saving and the view of private accounts as fungible personal wealth. If workers must be forced to save during their working years to provide a source of income during retirement, it seems unrealistic to assume that they will suddenly become optimally rational and prudent decisionmakers upon retirement.¹⁰³ Moreover, the PSA plan would be likely to create intense political pressure to permit early withdrawals from private accounts. Just as voluntary pre-tax retirement accounts can be tapped under present law for specified purposes (e.g., to purchase a home, finance an education or pay medical expenses), it would be surprising

¹⁰⁰ See ADVISORY COUNCIL REP., *supra* note 9, at 117 (statement of Joan T. Bok et al.) (suggesting that retired workers might be required to hold annuities with some minimum payout (e.g., 150 percent of poverty level) to prevent them from spending down assets quickly and becoming "a burden on public assistance programs").

¹⁰¹ See Peter A. Diamond, *Macroeconomic Aspects of Social Security Reform*, in 2 BROOKINGS PAPERS ON ECONOMIC ACTIVITY 1, 45 (1997) (noting political issues raised by contrasting views of "wealth entitlement" and "retirement income entitlement").

¹⁰² ADVISORY COUNCIL REP., *supra* note 9, at 117 (statement of Joan T. Bok et al.).

¹⁰³ See *id.* at 157 (statement of Edward M. Gramlich and Marc M. Twinney). ("The government is in effect saying to people that it does not trust them to save for the future when they are younger than 62, so it requires them to hold PSAs. But once these people become 62 they suddenly become wise and responsible, and the government no longer requires them to preserve their assets beyond that date").

if private accounts remained truly untouchable until retirement.¹⁰⁴

If private accounts could be drawn down relatively easily before retirement, some workers would find themselves without adequate resources when they reached retirement age. Even those who maintained their private accounts intact until retirement might exhaust their resources as a result of poor planning or catastrophic events such as illness. Since annuities function as insurance against living too long, the principal beneficiaries of mandatory annuitization would be long-lived workers and their surviving spouses. The same group, made up predominantly of women, is likely to suffer the greatest hardship, especially in extreme old age, in the absence of mandatory annuitization.¹⁰⁵

Unlike the PSA plan, the IA plan would require annuitization of account balances at retirement. The default option for a married worker would be a joint-and-survivor annuity for the lives of the respective spouses, but with spousal consent a worker could elect a single-life annuity instead. In the analogous context of private pensions, a couple's choice between a single-life or joint-and-survivor annuity may depend on several factors. A joint-and-survivor annuity provides continued protection after the worker's death for the surviving spouse, at the cost of reduced annuity payments while both spouses are living. This option may be attractive to financially secure couples whose standard of living will not be seriously affected by reduced annuity payments, especially if they expect a prolonged widowhood for the surviving spouse and if they have relatively few other disposable assets.¹⁰⁶

Although economists often treat the household as a "decisionmaking unit with a single (joint) lifetime utility function," this model does not provide a persuasive explanation of actual

¹⁰⁴ See Lawrence H. Thompson, *Individual Uncertainty in Retirement Income Planning Under Different Public Pension Regimes*, in FRAMING THE SOCIAL SECURITY DEBATE: VALUES, POLITICS, AND ECONOMICS 113, 132 (R. Douglas Arnold et al. eds., 1998) (noting that existing law permits early withdrawals for home purchases and for medical or educational expenses, with the result that "a substantial portion of what is set aside in individual retirement savings programs may be dissipated prior to retirement").

¹⁰⁵ See Hurd, *supra* note 33, at 223.

¹⁰⁶ See Holden, *supra* note 12, at 365.

behavior in making annuitization decisions.¹⁰⁷ For example, the percentage of single-life annuities elected by married participants in private pension plans declined dramatically following the enactment of a spousal consent provision in 1984, which suggests that unconstrained choice under prior law may have failed to maximize household utility.¹⁰⁸ Even with the spousal consent requirement, many couples still waive the joint-and-survivor annuity option in favor of a single-life annuity. In some cases, waiving protection for the surviving spouse may rationally maximize the couple's joint utility based on factors such as the health and life expectancy of the respective spouses.¹⁰⁹ Critics argue, however, that the spousal consent requirement by itself may provide inadequate protection for the surviving spouse due to poor information or unequal bargaining power.¹¹⁰

In the context of private pension plans, a couple's waiver of a joint-and-survivor annuity may put the surviving spouse's financial security at risk. Indeed, for some widows, the loss of pension benefits at the death of a husband signals a significant decline in economic status.¹¹¹ As long as private pensions operate as a supplement to basic survivor protection, it may be reasonable to allow a range of payout options. However, if basic survivor protection is sharply reduced or eliminated in a privatized system, joint-and-survivor annuity benefits should be mandatory rather than optional for married couples. Ensuring a minimum level of protection for survivors should take precedence over the use of private accounts for bequests or other purposes unrelated to retirement security. Mandatory annuitization would also help to mitigate problems of adverse selection and bring down the cost of annuities.¹¹²

¹⁰⁷ See Diamond, *supra* note 101, at 56.

¹⁰⁸ See *id.* at 56-57 ("If there were a single household maximization, the Retirement Equity Act would not have had any effect on the choice between single and joint life annuities.").

¹⁰⁹ See Holden, *supra* note 12, at 367.

¹¹⁰ See ADVISORY COUNCIL REP., *supra* note 9, at 154 n.27 (statement of Edith U. Fierst).

¹¹¹ See Holden, *supra* note 12, at 361.

¹¹² Mandatory annuitization, if based on uniform national mortality statistics, would discriminate against groups with short life expectancies, including some minority groups. See ADVISORY COUNCIL REP., *supra* note 9, at 117 (statement of Joan T. Bok et

It might seem that an adequate level of survivor protection could be achieved by requiring that only part of the balance in private accounts be annuitized. Though perhaps politically attractive, such a compromise solution would raise sensitive issues concerning the appropriate level of annuitization.¹¹³ To avoid too sharp a drop in living standards, the minimum annuity might have to be set by reference to pre-retirement wages rather than a lower poverty index.¹¹⁴ If early withdrawals were permitted, it would be necessary to monitor fluctuating balances in private accounts to ensure that there would be sufficient funds at retirement to purchase a target-level annuity. In addition, annuity payments would have to be indexed for inflation to preserve the real value of the required minimum benefits.

Requiring that a married couple receive benefits in the form of a joint-and-survivor annuity would allocate the available benefits more equally between the spouses over time and redistribute income to the lower-wage, longer-lived spouse. Although this might provide a modest windfall for some survivors, more accurate targeting of benefits would not be costless. Furthermore, a relatively well-off couple would be free to neutralize the effects of mandatory annuitization by using other assets for non-retirement spending or bequests. Given the current state of knowledge concerning bequest behavior, it is impossible to predict what effect, if any, mandatory

al.); Diamond, *supra* note 101, at 57. The annuity feature of the existing benefit system has also been criticized as having an adverse impact on these groups. The overall fairness of the existing benefit structure is difficult to assess, however, because other features have opposite or countervailing effects. See Burke & McCouch, *supra* note 11, at 1231 n.124.

¹¹³ See ADVISORY COUNCIL REP., *supra* note 9, at 117 (statement of Joan T. Bok et al.). Cf. Kent A. Smetters, *Thinking About Social Security's Trust Fund*, in POSITIONING PENSIONS FOR THE TWENTY-FIRST CENTURY 201, 214 (Michael S. Gordon et al. eds., 1997) (arguing that full annuitization may not be optimal, and that "[a]t least some lump-sum disbursement will be desirable for the purpose of making a bequest, giving inter-vivos transfers to children (e.g., as a down payment on a house), or holding a buffer for medical and non-medical expenses faced by beneficiaries and their heirs").

¹¹⁴ See WALLISER, *supra* note 80, at 31 (describing Chilean system, which permits lump sum withdrawals as long as the remaining balance is sufficient to finance a specified minimum annuity); cf. Jonathan Barry Forman, *Whose Pension Is It Anyway? Protecting Spousal Rights in a Privatized Social Security System*, 76 N.C. L. REV. 1653, 1682 (1998) (suggesting 125 percent of poverty level).

annuitization would have on the level of bequests.¹¹⁵ If amounts accumulated in private accounts substantially exceed the levels needed to maintain pre-retirement standards of living, one solution might be to limit tax-favored treatment for excess accumulations of retirement funds.¹¹⁶

C. Improving Survivor Benefits

In the current debate over privatization, it is easy to overlook the full range of options for reforming the existing system. One moderate proposal that deserves more careful consideration recommends a cost-neutral approach to reducing the economic risk of poverty among elderly widows. Even if the controversy over disparate treatment of one-earner and two-earner couples cannot be fully resolved, this proposal would provide enhanced protection for an especially vulnerable group and thereby help to allay perceptions of "unfairness" to women under the existing system.¹¹⁷ Improving survivor benefits represents an important incremental reform that would help fulfill "one of the unmet social goals set by the framers of the Social Security system."¹¹⁸

The existing system provides relatively greater benefits for a married couple than for a surviving spouse. The cost-neutral proposal would shift a portion of the couple's benefits to the surviving spouse, while holding the spouses' combined lifetime benefits constant. As a result, the couple would receive lower benefits while both spouses were living, but after the first spouse's death the survivor would receive higher benefits. For example, the survivor benefit might be

¹¹⁵ See Douglas Holtz-Eakin, *The Uneasy Empirical Case for Abolishing the Estate Tax*, 51 TAX L. REV. 495, 507-11 (1996). Life insurance provides another means of offsetting the effects of excessive annuitization. See Diamond, *supra* note 101, at 57.

¹¹⁶ Mandatory annuitization may seem objectionable on the ground that it would leave workers exposed to fluctuations in the market for annuities, which may be quite sensitive to changes in interest rates and stock market prices. See ADVISORY COUNCIL REP., *supra* note 9, at 117 (statement of Joan T. Bok et al.). This problem, however, is inherent in any defined-contribution system. See Diamond, *supra* note 16, at 40-45 (noting that defined-contribution system places market risk "squarely on the individual worker," while defined-benefit system permits "wider pooling of risks").

¹¹⁷ See Sandell & Iams, *supra* note 18, at 293.

¹¹⁸ Holden, *supra* note 27, at 101.

set equal to 75 percent of the combined benefits received by the couple while both spouses were living.¹¹⁹ Since married couples face a relatively low risk of poverty, this reallocation of benefits would be a relatively target-efficient way to promote social adequacy under the existing system. The proposal would generate an increase of around \$1.45 in the survivor benefit for each \$1 reduction in the combined benefits of a typical couple while both spouses were living.¹²⁰ As long as the reallocation of benefits remained actuarially fair, the net cost to social security would be zero.

Reallocating benefits from couples to surviving spouses would ameliorate the high rate of poverty among elderly widows. At the same time, the proposal would also reduce the existing disparity in survivor benefits between one-earner and two-earner couples. The survivor benefit would be set equal to a uniform percentage of the couple's combined benefits, regardless of the division of wages between husband and wife. In the case of a two-earner couple, the secondary earner's contributions would no longer be "wasted" but would generate an increased survivor benefit. Thus, one-earner couples would no longer receive better survivor protection than two-earner couples.¹²¹ While both spouses were living, however, one-earner couples would continue to enjoy more favorable treatment than two-earner couples.

If spousal benefits represent an unwarranted subsidy for traditional families, one solution might be a general reduction in spousal benefits coupled with a corresponding increase in survivor benefits.¹²² The burden of such a reduction in spousal benefits would fall primarily on one-earner couples, but the reduction in their spousal benefits would be partially offset by the increase in their survivor benefits. For women entitled to worker-only benefits, the reduction in

¹¹⁹ See BURKHAUSER & SMEEDING, *supra* note 4, at 13; see also Sandell & Iams, *supra* note 18, at 284-85.

¹²⁰ See Sandell & Iams, *supra* note 18, at 280. See also ADVISORY COUNCIL REP., *supra* note 9, at 144 (statement of Edith U. Fierst).

¹²¹ See Holden, *supra* note 27, at 101-02.

¹²² See ADVISORY COUNCIL REP., *supra* note 9, at 144 (statement of Edith U. Fierst) (noting that implementation of an actuarially fair survivor benefit of 75 percent would mean reducing the spousal benefit from its present 50 percent level to around 20 percent).

spousal benefits would have no effect at all. For two-earner couples in which the secondary earner is dually-entitled, depending on the level of spousal benefits, the change might reduce somewhat the couple's combined benefits, but again the reduction would be partially offset by the increase in survivor benefits.¹²³

From a policy perspective, some variants of benefit-shifting may be more attractive than others. While increasing survivor benefits would help most women, reducing spousal benefits would have the greatest impact on the 5 percent of future couples in which the secondary earner (typically the wife) is expected to receive spouse-only benefits. Couples retiring in the future with spouse-only benefits may well have other resources sufficient to provide an adequate level of retirement income. Since the primary goal of the proposal is to improve the economic security of widows,¹²⁴ not all women would benefit and some might be worse off. For example, lower spousal benefits would adversely affect divorced women whose ex-husbands were still alive; these women would benefit from higher survivor benefits after the death of their ex-husbands, however, to the same extent as other widows. Never-married women (and men) would not be affected by a cost-neutral reform that merely reallocated benefits among married couples. While hardly a panacea, the proposal to reduce spousal benefits and increase survivor benefits would serve much the same purposes as the joint-and-survivor annuity provisions of ERISA and might well improve both equity and adequacy in the existing system.

The proposal to reallocate benefits focuses attention on the important distinction between spousal benefits and survivor benefits. Though often linked together for analytical purposes, these two types of derivative benefits serve quite different functions.¹²⁵ Spousal benefits no longer redistribute to women who are in greatest need, nor

¹²³ See Sandell & Iams, *supra* note 18, at 294.

¹²⁴ As long as widows continue to have a significantly higher poverty rate than married couples, benefit-shifting should improve overall adequacy. The gains might be less than expected, however, if official poverty-level guidelines mismeasure the poverty of surviving spouses relative to married couples. See Hurd, *supra* note 33, at 223.

¹²⁵ See Holden, *supra* note 27, at 101 (noting that spousal and survivor benefits "perform different functions and need not be directly linked in reform proposals").

can they be defended on grounds of equity; there is a strong case to be made for reducing or eliminating them.¹²⁶ By contrast, survivor benefits still have a crucial role to play in promoting adequacy; although the formula for calculating survivor benefits can and should be reformed to reduce disparities between one-earner and two-earner couples, the overall level of these benefits should not be cut back. The debate over fairness to one-earner and two-earner couples should not stand in the way of specific, concrete reforms that would ameliorate the risk of poverty for older women. Remedying the gap in economic well-being between older women and men remains "the most pressing unfinished business of social policy toward the aged."¹²⁷

CONCLUSION

In assessing alternative proposals for social security reform, it is important to examine how each proposal would affect the economic well being of various groups. Although the redistributive features of the existing system tend to benefit women overall, there is still a substantial disparity between women and men in economic security in retirement and old age. Furthermore, it seems unlikely that most women would fare better under a privatized system. Instead of narrowing the gap between women and men, current privatization proposals threaten to curtail the redistributive features of the existing system and increase the risk of poverty for elderly widows. By contrast, moderate reform of the existing benefit structure could provide substantially better protection for especially vulnerable groups such as widows while mitigating disparities between one-earner and two-earner couples. Of course, under any reform proposal, as under the existing system, some groups will inevitably fare better than others, given the tension between goals of social adequacy and individual equity.¹²⁸ Nevertheless, it would be a serious mistake to

¹²⁶ Nevertheless, an across-the-board reduction in spousal benefits would raise a serious problem of adequacy for divorced women.

¹²⁷ BURKHAUSER & SMEEDING, *supra* note 4, at 7.

¹²⁸ See Joseph F. Quinn, *Criteria for Evaluating Social Security Reform*, in

remove the component of social adequacy from federal retirement policy; basic needs that are not met through social security will reappear in the form of claims for means-tested public assistance.¹²⁹ The allure of high returns and individual control in a privatized system should not obscure the accompanying risks and social costs. For most women, as for most Americans, there is a real stake in preserving a politically viable and financially stable system of collective security in retirement and old age.

POSITIONING PENSIONS FOR THE TWENTY-FIRST CENTURY 37, 54 (Michael S. Gordon et al. eds., 1997) ("Income redistribution explicitly treats different people differently — that is the point of it.").

¹²⁹ See ADVISORY COUNCIL REP., *supra* note 9, at 71 (statement of Robert M. Ball et al.) (warning that PSA plan "might well end up trading Social Security for an enlarged SSI program plus a compulsory savings plan").